



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

April 7, 1995

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

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APR 10 1995

FCC MAIL ROOM

Re: In the Matter of MFS Petition for Rulemaking to
Unbundle Local Exchange Carrier Common Line
Facilities; RM-8614

DOCKET FILE COPY ORIGINAL

Dear Secretary Caton:

Enclosed for filing with your office is an original and four
(4) copies of the Comments of the Pennsylvania Public Utility
Commission in the above-captioned matter.

Copies have been provided as indicated in the attached
Certificate of Service.

Thank you for your assistance with this matter.

Very truly yours,

Maureen A. Scott
Assistant Counsel

Encl.

cc: Parties Listed on the
Attached Certificate of
Service

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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In the Matter of

MFS PETITION FOR RULEMAKING TO
UNBUNDLE LOCAL EXCHANGE CARRIER
COMMON LINE FACILITIES

RM-8614

COMMENTS OF THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

I. Introduction

On March 7, 1995, MFS Communications Company, Inc. (hereinafter referred to as "MFS", the "Company" or "Petitioner") filed a Petition for Rulemaking ("Petition") with the FCC to adopt rules requiring Tier 1 LECs (except NECA pool members) to provide the common line used in the provision of local exchange service on an unbundled basis, at cost-based rates, to state-certified competing providers of local service. The Company also requests that the FCC establish nonbinding guidelines for pricing the loop relative to the price charged for end user local service. The Company further proposes increased pricing flexibility at the federal level for Tier 1 LECs implementing State rules which incorporate the federal guidelines. Finally, the Company requests that the Commission adopt rules to govern the future application of the federal Subscriber Line Charge ("SLC") and the Carrier Common Line Charge ("CCLC") to unbundled loops.

In response to the Company's Petition, the Pennsylvania Public

Utility Commission ("PaPUC" or "Pennsylvania") submits the following brief comments. Petitioner's issues relate solely to the competitive provision of local service. Pursuant to Section 152(b) of the Communications Act, as amended, 47 U.S.C. Section 152(b), the FCC has no jurisdiction over intrastate services, including local service. The FCC's resources should not be needlessly diverted to matters outside of its jurisdiction. Additionally, the PaPUC would oppose any action by the FCC in response to the Company's Petition which would attempt to preempt the PaPUC's legitimate decision-making authority over intrastate services and the decisions ultimately rendered in Pennsylvania addressing the issues raised by Petitioner.

Setting aside the obvious jurisdictional defects in the Petition, Petitioner has not established any overriding need for FCC intervention. States, including Pennsylvania, are addressing local loop unbundling and pricing issues as competitive entry is authorized. Further, the need for uniformity of standards for local service between jurisdictions is less than clear since no transmissions between States are involved and there has been no demonstration that varying or inconsistent State decisions (if there are any) have somehow burdened the Petitioner in its provision of interstate services.

Notwithstanding our opposition to these portions of the MFS Petition, for the reasons below stated, the PaPUC does support the Company's request for a rulemaking to address how the interstate SLC and CCLC will be assessed and calculated in the future for

unbundled loops in competitive markets.

II. Discussion

A. The FCC Has No Jurisdiction Over Local Service

The issues raised by Petitioner relate solely to its ability to provide local exchange service on a competitive basis with the incumbent LEC. The FCC has no jurisdiction over local service, and consequently, the issues raised by Petitioner are outside of its jurisdiction. It would be unlawful for the FCC to grant the relief requested by Petitioner which would require it to establish local loop unbundling standards and voluntary intrastate pricing guidelines which would either overrule legitimate State decisions, or, improperly penalize LECs at the federal level for not complying with FCC voluntary pricing guidelines for intrastate services.

1. Local Loop Unbundling Issues

Existing case law interpreting relevant federal statutory provisions is clear that issues surrounding the provision of local exchange service is within the exclusive jurisdiction of the State commissions. See, 47 U.S.C. 152(b) as interpreted by Louisiana Public Service Commission v. FCC, 476 U.S. 355 (1986) ("Louisiana"). Despite the crux of the Company's jurisdictional argument that the local loop is used to originate and terminate both interstate and intrastate communications, and therefore, that the FCC has the requisite authority to resolve local loop unbundling issues; indisputably, the Company's Petition is inextricably intertwined or premised upon its ability to provide local exchange service in competition with the incumbent LEC.

Because the genesis of Petitioner's request is the ability to effectively compete in the local exchange market where competitive entry has been authorized, the fact that the loop is also used to terminate interstate calls is not dispositive. Indeed, Section 152(b), 47 U.S.C. Section 152(b) does not in any way suggest that the States' jurisdiction over intrastate services, including local service, is confined to instances where the services are offered over facilities that are used for intrastate traffic or transmissions only. The fact that interstate calls are terminated on the local loop does not give the FCC jurisdiction over competitive local service issues. Petitioner's arguments, if accepted, would effectively gut Section 152(b) and render it meaningless.

It is clear from the Petition, that Petitioner stands before the FCC solely because it desires to compete more effectively in the local service marketplace. Issues involving local service and the competitive provision of local exchange service are matters within the exclusive jurisdiction of the States.

Further, notwithstanding MFS' arguments to the contrary, the FCC's policy goal to ensure open and nondiscriminatory access and interconnection to the public switched network is not enough to negate legitimate State authority over local service and override the clear mandate of Section 152(b), 47 U.S.C. Section 152(b). The holding in Louisiana is clear that FCC goals, no matter how important, can not be used to preempt the authority of States over intrastate services contained in Section 152(b) of the

Communications Act of 1934, as amended, 47 U.S.C. Section 152(b).

In summary, the FCC has no jurisdiction over local service and the unbundling issues raised by MFS. As with other matters involving intrastate services, MFS should address its proposals to the respective State commissions, as competitive entry is authorized in each case.

2. Local Loop Pricing Issues

MFS acknowledges that the FCC has no authority over competitive local service pricing issues. In light of this, MFS urges the FCC to adopt nonbinding guidelines for the States to follow in pricing the unbundled local loop relative to the charge imposed on end users for local exchange service. The Company sets forth specific guidelines including the use of Total Service Long Run Incremental Costs ("TSLRIC") and an imputation standard to be used as an alternative to cost-based pricing. As part of the Company's proposal, LECs implementing the voluntary pricing guidelines would be afforded greater pricing flexibility at the federal level.

While the PaPUC cannot comment on the merits of the Company's proposals because of the proceedings currently pending before it, the PaPUC cannot endorse the Company's proposal with respect to loop pricing for other reasons. Aside from the fact that the FCC has no jurisdiction over local service pricing, States are much better positioned to address local loop pricing issues as they relate to the competitive provision of local service than the FCC. Moreover, since the FCC's experience with the incremental costing

methodologies advocated by the Company is limited, the development of the federal guidelines urged by Petitioner could take significant time and effort. The FCC's resources are needed to carry out its own responsibilities without being diverted unnecessarily to matters outside its jurisdiction.

Finally, the PaPuC does not see merit in the Company's proposal to bootstrap a LEC's interstate pricing flexibility to its use of the local loop pricing standards urged in this proceeding. This proposal would inappropriately intermingle interstate and intrastate access elements in the federal pricing basket or plan, and improperly penalize some LECs simply because a given State may decide to modify or otherwise not adopt the FCC guidelines in total; actions which may be entirely appropriate given conditions in the particular jurisdiction.

For these reasons, the FCC should reject the Company's request that it establish nonbinding guidelines for the States to follow in pricing the unbundled loop.

B. The Jurisdictional Bar Aside, The Petition Does Not Identify Any Compelling Need for The FCC to Become Involved In Local Loop Issues

Even setting aside the FCC's obvious lack of jurisdiction, the basis for the "immediate action" urged by Company in its Petition is unclear in light of the Company's statement that many of the States which authorize competitive entry into the local exchange market are already considering, or have already acted upon, the issues raised.

Chapter 30 of the Pennsylvania Public Utility Code¹ authorizes the provision of local service by carriers other than the incumbent LEC. Three dockets or applications, including one by the Petitioner, are currently pending before the PaPUC.² As part of its mandate under Chapter 30, the PaPUC is currently considering the very issues raised by Petitioner which the Petitioner now asks the FCC to address.³

In addition, Petitioner cites to other proceedings in other States which have already addressed or are in the process of addressing these issues. Company states only that it has faced problems when going directly to the LEC and requesting unbundling on a voluntary basis. Pet. at 14. ("MFS has made direct requests of several LECs that it be permitted to purchase a loop without a port, but almost all such requests have been reflexibly denied.")

Moreover, the need for the development of uniform nationwide technical standards between jurisdictions for local service is not clear. Local service does not involve transmissions between States; local service competition is still in its infancy;

¹66 Pa. C.S. Section 3000, et seq.

²Application of MFS Intelenet of Pennsylvania, Inc., Docket No. A-310203F0002; Application of MCI Access Transmission Services, Inc., Docket No. A-310236F.002; and Application of TCG Pittsburgh, A-310213F.002.

³See, Investigation Pursuant to Section 3005 of the Pennsylvania Public Utility Code, 66 Pa. C.S. Section 3005, and the Commission's Opinion and Order at Docket No. P-930715 to Establish Standards and Safeguards for Competitive Services and With Particular Emphasis in the Areas of Cost Allocation, Cost Studies, Unbundling and Imputation and to Consider Generic Issues for Future Rulemaking, Docket No. M-940587.

Petitioner is only requesting at this time that the loop be unbundled from other access elements including the port; and Petitioner has not shown that inconsistent State decisions (if there are any) have somehow burdened the Petitioner in the provision of interstate service.

In summary, the considerable work which Petitioner asks the FCC to undertake on these issues would merely be duplicative of the individual States' efforts. Surely, this is not the most efficient or best use of either the FCC's or States' already limited resources, and therefore, the Petitioner's request for immediate FCC intervention should be denied.

C. The FCC Should Grant Petitioners Request For A Rulemaking to Examine the Continued Application of the CCLC and SLC To Unbundled Loops

As MFS notes, the LECs currently recover the interstate portion of local loop costs through two common line elements -- the SLC and the CCLC. The SLC is assessed directly upon end users and the CCLC is assessed upon access customers that originate or terminate interstate calls on common lines.

MFS proposes that the LECs be permitted to collect the SLC charge from entities purchasing unbundled common lines, in lieu of collecting these charges from the ultimate end user, with whom the LEC may no longer have a business relationship. It further proposes that LECs not be permitted to assess CCL charges with respect to minutes of use originating or terminating on unbundled common lines since it would be impossible for the LECs to measure such minutes when the traffic on unbundled common lines did not

pass through a LEC switch.


The FCC obviously found these to be legitimate concerns when it recently granted the request of Rochester Telephone Company ("Rochester") for waiver of the FCC's Part 69 access rules to permit Rochester to assess the SLC directly on competitive providers and to impose a flat-rate CCLC upon those competitive carriers whose traffic did not pass through Rochester's switches.⁴ Therefore, PaPUC supports the Company's request for FCC examination of this issue in the context of a rulemaking proceeding.

III. Conclusion

The Pennsylvania Public Utility Commission supports the goals of competition and open and nondiscriminatory access to the public switched network. However, consistent with the above comments, the FCC has no authority to resolve issues related to the competitive provision of local exchange service, and therefore, the local loop unbundling and pricing issues raised by Petitioners are better addressed to and resolved by the individual States. The FCC should, however, in the context of a rulemaking proceeding, examine the continued application of the SLC and CCLC in their current form to unbundled loops in a competitive local service marketplace.

⁴Action by the Commission on March 7, 1995, on Rochester Telephone Company's request for Part 69 rule waivers to implement its Open Market Plan. Copy of news release attached as Exhibit A.

Respectfully submitted,

A handwritten signature in cursive script, reading "Maureen A. Scott", written in dark ink. The signature is positioned above a horizontal line.

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Dated: April 7, 1995

2ND ITEM of Level 1 printed in FULL format.

COMMON CARRIER ACTION ROCHESTER TELEPHONE CORPORATION
GRANTED RULE WAIVERS TO IMPLEMENT ITS OPEN MARKET PLAN

Report No. CC 95-17

FEDERAL COMMUNICATIONS COMMISSION

1995 FCC LEXIS 1542

March 7, 1995

ACTION: [*1] NEWS

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OPINION:

Expressing strong support for the efforts of individual local telephone companies and state commissions to begin the transition to full competition in the local exchange, the Commission today granted Rochester Telephone Corporation the federal regulatory modifications it sought to facilitate competition in the provision of local telephone service in the Rochester, New York area. Rochester is one of the first areas in the country that will have competition at the local level with respect to both business and residential service offerings.

In 1993, Rochester filed a petition with the New York State Public Service Commission proposing an "Open Market Plan" for unbundling network services. It proposed to restructure the provision of services to end users and other carriers in a manner that it expects will permit vigorous competition to develop for local exchange services. Rochester implemented the plan on January 1, 1995.

Under the Open Market Plan, Rochester restructured itself into a basic network services company, which retains the Rochester name, and a competitive company, Frontier Communications of Rochester, which the New York PSC will regulate as a non-dominant carrier. [*2] Rochester provides basic network services, such as interstate access. It also provides, on an unbundled, non-discriminatory basis, the local loop, switching, and transport functions that reseller carriers need to provide local exchange telephone service. It offers these intrastate services as a wholesaler, at discounted prices lower than its standard retail rates.

Rochester requested waivers of Part 69 of the Commission's rules so that the company could change the way it recovers three types of interstate access charges when another carrier is reselling Rochester's lines to end users. The access charges involved are the subscriber line charge (SLC) and a charge for changing presubscribed long distance carriers, both paid by end users, and the carrier common line (CCL) charge, paid by long distance carriers. Initially, Rochester will continue to offer local exchange telephone service to most customers as a retailer. Rochester requested these waivers because a number of competing companies are expected to provide intrastate "retail" service to end users, using Rochester's "wholesale" facilities, while the current federal access charge structure is premised on local facilities-based [*3] companies like Rochester having an exclusive, direct relationship with the end-user.

Under the waivers approved by the Commission today, Rochester will recover

SLC and pre-subscription change charges from carriers that purchase and resell its subscriber lines. For competing local service providers that purchase Rochester's subscriber lines, but not its local switching services, Rochester will assess a flat-rated CCL charge based on the average level of interstate traffic on its own subscriber lines. The Commission directed Rochester to calculate changes in the CCL in a manner that reasonably estimates the growth rates of competitive providers of local retail service that use Rochester's subscriber lines.

The Commission denied Rochester's proposal to impose a pricing restriction on resellers, that is, requiring purchasers of its subscriber lines to impose a federal SLC no more than the SLC charged by Rochester.

In the Order adopted today, the Commission called the actions of Rochester and the New York State Public Service Commission "an encouraging experiment," and observed that "the possibility of fundamental reform in the future may be facilitated by granting a waiver in this [*4] instance." The Commission concluded that "experimentation in this area may produce useful data about the effect of alternative rate structures on the development of competition."

Action by the Commission March 7, 1995, by Order (FCC 95-96). Chairman Hundt, Commissioners Quello, Barrett, Ness and Chong with Commissioner Barrett issuing a separate statement.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing COMMENTS OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION were served this 7th day of April, 1995, by first class mail, postage pre-paid, upon the following parties:

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